

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WLTX-TV, A DIVISION OF PACIFIC AND SOUTHERN COMPANY, INC.¹

Employer

and

Case No. 11-RC-6332

LOCAL UNION 776, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO, CFL

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 2/

All full time and regular part time employees of the Employer engaged in the production, operation, and broadcasting of television programs including Camera Operators, Photographers, Engineers, Master Control Operators, Audio Operators, Production Assistants, Chyron Operators, Assignment Editors, and Tape Operators at its Columbia, South Carolina facility; but excluding all other employees, Officers, Managers, Directors, Producers, Reporters, Anchors, Traffic Coordinators, Traffic Coordinator Assistants, Program Director Assistants, Salespersons, office clerical employees, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

¹ The Employer's name appears as amended at the hearing.

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

Local Union 776, International Brotherhood of Electrical Workers, AFL-CIO, CFL

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge of the Subregion who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Region 11 office on or before **May 5, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 12, 1999**.

Dated April 28, 1999

at Winston-Salem, North Carolina

/s/ Willie L. Clark, Jr.
Regional Director, Region 11

2/ The Employer is a Delaware Corporation with a facility located at Columbia, South Carolina, where it is engaged in the production and broadcast of television programs. During the past twelve months, a representative period, it derived gross revenues in excess of \$250,000 and received goods and materials valued in excess of \$50,000 directly from points outside the State of South Carolina. At the hearing, the Employer alleged that it was without sufficient knowledge to stipulate that the Petitioner is a Labor organization as defined by the Act and urges in it's brief that the petition be dismissed or the record be re-opened for testimony on that point. The Employer currently employs four employees who are called "Directors:" a Senior Director, whom the parties stipulated to be a supervisor within the meaning of Section 2(11) of the Act; two News Directors; and one Commercial Director. The parties are in agreement regarding the composition of the unit with the exception of the status of the two News Directors and the Commercial Director. The Petitioner would include those classifications within the Unit and the Employer maintains that they should be excluded because they are statutory supervisors. There is no history of collective bargaining between the parties. Both parties filed briefs which have been carefully considered. There are approximately seventy employees in the Unit found appropriate herein.

The Petitioner is a Labor Organization within the meaning of Section 2(5) of the Act.

As noted above, the Employer argues that the parties never stipulated regarding the Petitioner's status as a labor organization and the record herein contains no evidence in support thereof. The Employer, at hearing, assumed that the Petitioner might be a labor organization "as it's broadly defined" but was without sufficient knowledge to agree to such a stipulation. The Employer has made no argument or offered any evidence to dispute the Petitioner's status vis-a-vie Section 2(5) of the Act. I hereby take Administrative notice of M & M Electric Company, Inc., 323 NLRB 361 (1997), and find that the Petitioner herein is a labor organization as defined in Section 2(5) of the Act.

Directors are supervisors as defined in Section 2(11) of the Act.

The News Directors' primary responsibilities center upon broadcasting live newscasts on Monday through Friday, from 7:00 a.m. to 9:00 a.m., 12:00 noon to 12:30 p.m., 6:00 p.m. to 6:30 p.m., and 11:00 p.m. to 11:30 p.m. and on weekends from 6:00 p.m. to 6:30 p.m. and 11:00 p.m. to 11:30 p.m. In addition to the live broadcasts, the News Directors are responsible for directing the production of several five-minute newscasts, called "CNN Cut-ins", that they videotape to be later broadcast on the Cable News Network. The News Directors either direct the Cut-Ins themselves or assign the direction of the Cut-Ins to a subordinate as a training opportunity. "Rusty" Barnes, one of the News Directors at issue, normally spends three days per week assisting the Senior Director, whom the parties stipulated to be a supervisor, during the weekday evening news programs and is directly responsible for the CNN Cut-ins on those days. Barnes completely directs the weekend news broadcasts. The other News Director at issue, Eric Stiehr, directs the morning and noon broadcasts on Monday through Friday.

In directing a news broadcast, the News Directors work in tandem with producers, whom the parties stipulated to be supervisors. The producers supervise the pre-production of the newshow including scripts and newsfeatures. The Directors, in concert with the producers, create and direct the creation of the visual images to be broadcast, including both graphic and textual backgrounds. During the live broadcasts, the Directors direct and coordinate the efforts of cameramen, audio operators, chyron operators, engineers, the master control operator and the tape roller by giving instructions over a headset intercom system concerning the intensity of sound, the direction of the camera angles, the positioning of newsanchors and the image to broadcast.

The News Directors, utilizing their experiential knowledge and expertise, exercise independent judgment in directing such activities. The record suggests that Directors must know the essential functions of the employees whom they direct. Therefore, they routinely work their way up to the position of Director. For example, Rusty Barnes had been the Director of the campus television station prior to receiving his degree in Broadcast Journalism from the University of South Carolina. Prior to attaining the position of Director at issue herein, Barnes worked as an audio and chyron operator for the Employer. The Employer substantially increased his salary when promoting him to Director.

As noted above, the News Directors are also directly responsible for the CNN Cut-Ins. Rusty Barnes testified that he recently selected camera operator Ryan Cockrell to direct some CNN Cut-Ins. He explained that he chose Cockrell, over more senior and experienced employees, because Cockrell had impressed him with his initiative.

The Employer argues that Directors have the authority to discipline or to effectively recommend the discipline of employees. However, the record is inconclusive on this point. Operations Manager Jack MacGregor testified that he had been a Director at the television station from approximately 1981 to 1990. During his tenure as a director, he suspended an employee. However, as the Petitioner correctly argues, MacGregor testified that he occupied a position equivalent to that of Senior Director and never occupied one of the positions at issue herein.

In late March 1999, the employer initiated an evaluation program for employees. MacGregor testified that he specifically requested News Director Eric Stiehr to evaluate the performance of an audio operator whom he directs. As of the date of hearing, Rusty Barnes had yet to perform such an evaluation. Nonetheless, the record is clear that the News Directors have the authority, and the responsibility, to evaluate the performance of employees.

The Employer also employs a Commercial Director, who, as the name implies, is responsible for directing advertisements. Unlike the News Directors, most of his work is not live. MacGregor testified that the Commercial Director directly supervises a production assistant who functions as “a gripper, a lighting person, . . . a camera operator, . . . a record technician, . . . an assistant, he faxes, he writes, he helps- a lot of different tasks.” MacGregor opined that the Commercial Director *would* play a vital role in the evaluation of the production assistant. However, there is no evidence that he has of yet evaluated the performance of the Production Assistant. MacGregor testified that for the most part, the Commercial Director and the production assistant videotape and produce commercials at the facilities of customers without further assistance. However, when taping in the Employer’s facility, the Commercial Director occasionally utilizes regular studio cameramen. The record is clear that the Commercial Director has complete control over the production of commercials. He assigns the Production Assistant to do whatever tasks he wishes him to do.

The Commercial Director also directs a taped weekly 30-minute children’s show. He discusses with the Host/Producer of that show the content thereof. Once the taping begins, the Commercial Director directs the camera operators, the chyron operator, and the audio person in much the same manner as the News Directors do.

Based on the above, and the record as a whole, I find that the News Directors and the Commercial Director are supervisors within the meaning of Section 2(11) of the Act particularly noting that they have the authority to, and do, responsibly direct employees using independent judgment. See WTOP, Inc., 114 NLRB 976 (1967)

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